

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

JOE R. BRAWLEY,)
)
Plaintiff,)
)
v.) Civil No. **05-911-JLF**
)
U. S. BANK, N.A.,)
)
Defendant.)

NOTICE REGARDING MOTION for SUMMARY JUDGMENT

PROUD, Magistrate Judge:

Defendant has filed a Motion for Summary Judgment (**Doc. 37**), along with a Memorandum of Law in Support (**Doc. 38**). The motion is supported by various exhibits, including an affidavit.

Pursuant to *Lewis v. Faulkner*, **689 F.2d 100** (7th Cir. 1982) and *Timms v. Frank*, **953 F.2d 281, 286** (7th Cir.1992), when a defendant has filed a motion for summary judgment supported by affidavit, a plaintiff who “is not represented by counsel is entitled to receive notice of the consequences of failing to respond with affidavits to a motion for summary judgment.”

Lewis, at 102.¹

Plaintiff is hereby notified that **Fed.R.Civ.P. 56(e)** provides that:

When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the adverse party’s pleading, but the adverse party’s response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the

¹The Court invites defense counsel to review the Seventh Circuit’s suggestion that it should be the practice of defense counsel to include the required notice in the motion. See, *Lewis*, at 102-103.

adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party.

Plaintiff is warned that any factual assertion in the movant's affidavits will be accepted by the Court as true unless the plaintiff submits his own affidavits or other documentary evidence to contradict the assertion.

Plaintiff is hereby notified that he may not rest upon the allegations of his pleadings at this stage. Simply restating the allegations of the complaint will not defeat the motion. The Court will accept as true any factual assertion in defendants' affidavits unless plaintiff submits his own affidavits or other documentary evidence contradicting the assertion.

Plaintiff is granted additional time, up to and including January 17, 2007, in which to file his response to defendant's motion.

IT IS SO ORDERED.

DATED: December 11, 2006.

s/ Clifford J. Proud
CLIFFORD J. PROUD
U.S. MAGISTRATE JUDGE